

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIACALEB AZUCENA,  
Petitioner,

v.

DEPARTMENT OF HOMELAND  
SECURITY,

Respondent.

Case No. [23-cv-00531-RS](#) (PR)**ORDER OF DISMISSAL**

This federal action was filed as a petition for writ of habeas corpus, that is, as a challenge to the validity or duration of petitioner’s custody. A review of the original and amended petitions indicates that petitioner is not challenging any confinement — in fact, he is not in custody at all. The federal writ of habeas corpus is only available to persons “in custody” at the time the petition is filed. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). Because petitioner is not in custody, this Court has no jurisdiction over his petition.

Rather than challenge his custody, petitioner raises claims of illegal search and seizure at an unspecified airport and at San Francisco’s airport, and being touched inappropriately by border agents. (Am. Pet., Dkt. No. 5 at 5.) He seeks reinstatement of his travel rights and the return of his passport. (*Id.* at 6.) Petitioner should file a federal civil rights action against the federal employees from whom he seeks relief. A copy of the appropriate form will be sent to him. If petitioner files a federal civil rights action, it will

1 be a new suit, separate from the instant habeas action. He must not file his federal  
2 complaint in the present habeas suit.

3 This federal habeas action is DISMISSED for want of jurisdiction. This dismissal  
4 is without prejudice to petitioner raising his claims by way of a federal civil rights  
5 complaint. The Clerk shall enter judgment in favor of respondent and close the file.

6 **IT IS SO ORDERED.**

7 **Dated:** June 6, 2023



RICHARD SEEBORG  
Chief United States District Judge

United States District Court  
Northern District of California